entered in the journals, as directed by the state constitution. *Rash* v *Allen*, 76 Atl. 370 (Del.). Of course if the constitution directs the courts to consider the journals the final record and to declare an act void if certain facts do not appear therein,[8] they must obey; but that is not the better interpretation of a provision that a bill shall not become a law unless there be certain entries. For since the legislature can falsify the journals, the change from the record as established by custom would accomplish nothing. And it is submitted that the determination of whether the constitutional rules of legislative procedure have been followed is a political question. The vital function of the legislature is to enact laws, and it is not natural that the judiciary should be supervisors of a coördinate department's performance of its peculiar duty.[9]

DEVICES FOR SECURING IN SUBSTANCE DIRECT ELECTION OF UNITED STATES SENATORS. — The framers of the Federal Constitution undoubtedly intended that the state legislatures should exercise a deliberative choice in electing United States senators.[1] Yet many schemes have been devised for defeating that intention. Doubtless, from the very first, individual candidates for the legislature pledged themselves to support a particular candidate for the Senate. Frequently a party convention indorses one candidate for senator, and it is understood in advance that if that party has a majority in the legislature its nominee will be senator as a matter of course. Where, as in the famous race between Abraham Lincoln and Stephen A. Douglas, the question of electing a senator overshadows all other issues, the election of senators is practically direct.[2] Direct election may be even more nearly approached when the party nominee is chosen by direct primary. In the recent case of *State ex rel. Van Alstine* v. *Frear*, 125 N. W. 961 (Wis.), it was properly held that a statute providing for such direct primaries is constitutional, since they amount to no more than a petition; for the members of the legislature have the legal and, in the opinion of the Wisconsin court, the moral right to disregard the result if they see fit. At the regular elections in Oregon, the voters of all parties express a choice for senator from among the different party nominees for that office, and provision is made for a formal pledge by candidates for the legislature to abide by the result of the popular vote.[3] When such a pledge is prescribed as a requisite for eligibility to the legislature the line of constitutionality

---

[8] Where the constitution provided that notice of application for special acts should be given, that the legislature should prescribe the time and place of giving notice, the evidence thereof, and how such evidence should be preserved, it was held to mean that whether or not notice had been given was a judicial question. Ewing *v.* Trenton, 57 N. J. L. 318.

[9] See Field *v.* Clark, *supra;* Pangborn *v.* Young, *supra;* State *ex rel.* Jones *v.* Reed, *supra.*

[1] See 2 GILPIN, MADISON PAPERS, *passim*, especially 812–821; 12 LODGE, WORKS OF HAMILTON, 126, 129.

[2] See 2 NICOLAY AND HAY, ABRAHAM LINCOLN, 136.

[3] BELLINGER AND COTTON, ANNOTATED CODE AND STATUTES, 957; GENERAL LAWS (1905), 19.

seems to have been passed.[4] Nevertheless the legislature might still be said to have the legal power to disregard the popular vote; for state constitutions commonly provide that, "deliberation, speech and debate in either house of the legislature . . . cannot be the foundation of any accusation or prosecution, action or complaint in any other court or place whatsoever." [5] Were those provisions removed and violation of ante-election pledges made a crime, an election by the legislature in violation of its members' pledges would doubtless be effective, although subjecting the legislators to criminal prosecution. In such a state of affairs, even if the bare legal power to disregard the popular vote remained, no legislature would exercise that power. There would then be substantial nullification of the provision in the federal Constitution for "two Senators from each State, chosen by the Legislature thereof." [6]

The Senate is the "Judge of the Elections, Returns, and Qualifications of its own Members." [7] It might conceivably declare that a man chosen under one of these devices was not constitutionally elected. But it is believed that the existence of this power in the Senate does not preclude the courts from passing on the constitutionality of statutes providing for popular vote, when the question comes up in mandamus or injunction proceedings to require or prevent the taking of such a vote.[8] A decision of the Senate or even a resolution not called forth by any particular case (although not binding on future sessions of that body) would of course be followed by the courts. But it is submitted that, in the absence of any precedent in the Senate journal, every possible doubt should be resolved by the courts in favor of the constitutionality of these devices, otherwise the matter can never be squarely presented to the Senate where the final decisions of these questions must rest.

THE LEGALITY OF VOTING TRUSTS. — The most common device today of majority stockholders to secure stability in the corporation's policy and administration is the so-called "voting trust." The stockholders transfer their shares to trustees with power to vote them, and receive in return certificates giving all the beneficial interest in the stock except the voting power. The validity and effect of these agreements have been the subject of a great diversity of judicial opinion, as is illustrated by two recent decisions reaching opposite results. In *Boyer* v. *Nesbitt et al.*, 76 Atl. 103 (Pa.), the validity of a voting trust formed by the majority stockholders of a corporation for the purpose of maintaining its then officers in power and continuing the same business policy, was in question. The trustees were given the power to vote the stock, and a first option to purchase, for the benefit of the remaining members,

[4] Such a provision has been held to violate the state constitution of North Dakota. State *ex rel.* McCue *v.* Blaisdell, 118 N. W. 141 (N. D.).

[5] MASS. CONST., Pt. I, Art. XXI. For similar provisions in other state constitutions see STIMSON, FEDERAL AND STATE CONSTITUTIONS, 236.

[6] U. S. CONST., Art. I, sec. 3. Compare the substantial nullification, without the aid of legislation, of the similar provision for indirect election of President.

[7] U. S. CONST., Art. I, sec. 5.

[8] But see State *v.* Blaisdell, *supra.*